

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

KENNETH A. WHITE,

Plaintiff,

v.

CIVIL CASE NO. 1:12-07965

OLD REPUBLIC NATIONAL
TITLE INSURANCE, et al.

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is plaintiff's motion for recusal of Magistrate Judge R. Clarke VanDervort. (Doc. No. 21). Under 28 U.S.C. § 144, recusal of a judge is appropriate where the party seeking recusal files a timely and sufficient affidavit stating the judge has a personal bias or prejudice against either the affiant or in favor of any adverse party. The affidavit must allege a personal bias from an extrajudicial source. See Sine v. Local No. 992 Int'l Brotherhood of Teamsters, 882 F.2d 913, 914 (4th Cir. 1989).

Under 28 U.S.C. § 455, recusal is appropriate "if a person with knowledge of the relevant facts might reasonably question [a judge's] impartiality." United States v. Cherry, 330 F.3d 658, 665 (4th Cir. 2003). On appeal, recusal decisions are

reviewed under an abuse of discretion standard. United States v. Carmichael, 726 F.2d 158, 162 (4th Cir. 1984).

Plaintiff contends that Magistrate Judge VanDervort purposely failed to investigate plaintiff's background and intentionally falsely depicted his prior civil actions as related in a Proposed Report and Recommendation filed in another case. (Doc. No. 21 at 1). Plaintiff further contends that Magistrate Judge VanDervort failed to take steps to correct these errors after plaintiff submitted objections to the Proposed Report and Recommendation. As a result, plaintiff concludes that Magistrate Judge VanDervort cannot remain impartial or unbiased against him. (Doc. No. 21 at 2).

Recusal is unwarranted under either statute. There is nothing in the record that would cause an individual to question reasonably the impartiality of Magistrate Judge VanDervort. Furthermore, plaintiff does not allege that Magistrate Judge VanDervort has a personal bias based on an extrajudicial source. As a result, the court finds no need to recuse Magistrate Judge VanDervort. Accordingly, plaintiff's motion is **DENIED**.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and all counsel of record.

It is **SO ORDERED** this 16th day of January, 2015.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge